IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005292
UI-2023-005266

First-tier Tribunal No: PA/52054/2022
PA/52055/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of March 2024

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

MRS (FIRST APPELLANT)
FA (SECOND APPELLANT)
(ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Shah, Taj Solicitors
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 21 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. Both appellants are nationals of Bangladesh and entered the UK lawfully in January 2011 on visas. After unsuccessfully trying to extend his leave, the first appellant became appeal rights exhausted in November 2013. The second appellant's visa was extended to September 2017. In March 2017 both applied for asylum on the basis of a risk from the second appellants family. That application was refused, and an appeal to the First-tier Tribunal (FtT) was dismissed by Judge Anstis.

2. On 6 December 2019 the appellants made representations to the respondent on asylum and human rights grounds. The respondent treated these as a fresh claim and refused them.

In the First-tier Tribunal

3. Both appellants appealed to the FtT where the cases were heard together by Judge Harrington (the Judge). The appellants relied upon their asylum claim and art 8 rights. As the Judge identified, the 2019 representations were based on 4 new pieces of information asserted by the appellants:

    a. A false claim against the first appellant that resulted to an arrest warrant being issued against him in Bangladesh;
    b. A police report filed by the first appellant's family in respect of threats received;
    c. The first appellant's mental health;
    d. The latest Home Office report on forced marriage.

4. The evidence relied on by the appellants included newspaper articles and court documents (including the arrest warrant) from Bangladesh. The respondent disputed that these were either genuine or reliable.

5. In a determination dated 16 April 2023 Judge Harrington dismissed the appeals on both protection and human rights grounds.

In the Upper Tribunal

6. The appellants appealed the determination. The grounds submitted on their behalf stretch to 9 pages and outline 4 grounds, which can be summarised as follows:

    a. That the Judge "failed to follow the guideline cases" and "took a speculative approach" to document verification. In particular, the Judge failed to identify that there were two DHL envelopes, and did not raise this apparent shortcoming in the evidence (which was not apparent in the refusal by the respondent) with the parties at the hearing. The Judge failed to approach the non-verification of the

documents by the respondent in line with QC (verification of documents; Mibanga duty) [2021] UKUT 33 (IAC);

b. The Judge took a speculative approach towards the medical evidence and failed to assess whether it is reasonably likely that the appellants could access healthcare if removed to Bangladesh;
c. The Judge insufficiently reasoned a refusal on the grounds of para 276ADE of the Immigration Rules/art 8;
d. The Judge approached s117B of the Nationality, Immigration and Asylum Act 2002 incorrectly.

7. We had the benefit of submissions from both parties. Mr Shah submitted that the Judge had her attention drawn to the DHL envelopes, which were in evidence. The Judge found at [36] that it would have been easy to verify the documents. When asked by us if the appellants had requested the respondent to verify the documents, Mr Shah submitted that they had indicated in written submissions that they would be happy to wait for the respondent to verify the documents. He further submitted that the Judge did not make a clear finding on the sufficiency of state protection. Mr Shah continued to rely on the second to fourth grounds of appeal, but made no submissions on them in addition to the grounds of appeal, being content that they were self-explanatory. Mr Shah made some submissions on the evidence which might have been relevant were we hearing the case in the FtT, but they did not go to the question on appeal to the Upper Tribunal and need not be repeated here.

8. For the respondent, Ms Nolan submitted that the Judge's reference to only one envelope did not constitute a material error when the findings are read as a whole. The Judge took into account background information and how the court documents were said to have been served, as well as how difficult it is said to be to obtain false court or police documents as well as false newspaper articles. The Judge considered the alternative possibility of the documents being reliable and concluded at [49 – 53] that the appellants could internally relocate within Bangladesh.

Analysis and conclusions – Error of law

9. With regards to the DHL envelopes, the Judge states at [39] that "I only have one DHL envelope, dated 19th November 2019… this cannot have included the newspaper articles or the court document of 13th February 2020 and there is no clear evidence before me about how they came to the UK". It is clear from the Judge's reasons that this constituted an element of her assessment of whether the documents, including the arrest warrant, were reliable.

10. At p157-158 of the bundle before us (pJ1-J2 of the respondent's bundle in the FtT) is the DHL envelope detailed by the Judge. At p505-506 of the bundle before us (p43-44 of the appellants' bundle in the FtT) is a different DHL envelope dated 30 October 2021. This second envelope appears not to have factored in the Judge's analysis, nor has she otherwise acknowledged it. We find that this was an error.

11. Looking beyond [39], the Judge analyses at [36-38] the lack of checks that have been carried out (we return to the lack of checks below), the credibility of the appellants' case that the arrest warrants could not have been served on the first appellant's father, hat the appellants have only provided a subset of the court documents that could be expected. At [40-42] the Judge analyses how the timing of the allegations giving rise to the warrant impacts on the credibility of the claimed warrant and considers the police report apparently made by the first appellant's father. Given the Judge's analysis in those areas, we are not satisfied that her oversight on the DHL envelope might have made a difference to her overall finding on the documents.

12. We remind ourselves of the duty that can arise for the respondent to verify documents, as stated in QC. The judicial headnote in that case summarises the duty, from which we extract the following part:

> (1) The decision of the Immigration Appeal Tribunal in Tanveer Ahmed [2002] UKIAT 00439 remains good law as regards the correct approach to documents adduced in immigration appeals… An obligation on the respondent to take steps to verify the authenticity of the document relied on by an appellant will arise only exceptionally (in the sense of rarely). This will be where the document is central to the claim; can easily be authenticated; and where (as in Singh v Belgium (Application No. 33210/11)), authentication is unlikely to leave any "live" issue as to the reliability of its contents. It is for the tribunal to decide, in all the circumstances of the case, whether the obligation arises.

13. The Judge considers the reliability of the documents from [35] onwards. She finds at [36] that, in relation to the court and police documents, it would be easy to check if a document were genuine.

14. At [47] the Judge directs herself to the case of QC and concludes that the documents are not central to the claim, because there are a number of other issues which she considered would impact on the success or failure of the claim. We find that the Judge's determination considers the case as a whole, considering the strengths and weaknesses that had an impact on the appeal, and we find that the Judge was justified in coming to the conclusion that the duty to verify documents did not arise in this case.

15. For those reasons we find that the judge properly came to the conclusion that the duty to take steps to authenticate the documents did not arise in this case.

16. Importantly, the Judge goes on to assess at [51-53] what the outcome would be if the arrest warrant were genuine and reliable and whether the arrest of the first appellant would provide a means for the second appellant's family to locate and harm him. The question for the FtT here was whether the appellants had proved this element of their case. The Judge considered the background information that corruption is not a significant problem in the judiciary and concludes that the first appellant

would therefore be in custody for only a short time as he would easily be able to prove he was in the UK at the time of the allegation leading to the arrest warrant. The Judge concludes this means the second appellant's family would not be able to take action against him in the short time he would be in custody.

17. The appellants, in the grounds of appeal, refer to a Country Policy and Information Note (CPIN) Bangladesh: Actors of Protection, as evidence that relocation would not prevent arrest. There are two factors which lead this submission not to carry weight with us. Firstly, neither the FtT nor we were provided with a copy of this CPIN and so we cannot conclude whether it is consistent with the submission. Secondly, the Judge does not conclude that an arrest would not take place, rather that the deprivation of liberty would be short-lived and so represent no risk to the first appellant from the second appellant's family.

18. The appellants also plead that the Judge came to their conclusion on this point speculatively. With respect to Mr Shah, this rather ignores the fact that it is for the appellants to prove their case. The Judge is effectively saying in her determination on this point that, were she wrong about the arrest warrant, and the appellants were to relocate to another part of Bangladesh, the evidence before the Judge did not prove that the first appellant would be at risk from the second appellant's family. Where the Judge says "I cannot see how they could arrange to take action against him", this is an assessment of the evidence, not speculation. The evidence may have been unsatisfactory, but the judge has to make a decision on what is presented to them. We are satisfied that the Judge came to this conclusion properly and did not err in law.

19. With regards to the second ground, the Judge identifies the previous decision of Judge Anstis at [27h] as her starting point. That starting point was that neither have medical conditions that would require a grant of leave on human rights grounds. At [29] the Judge notes that she has been asked to depart from the decision of Judge Anstis in a number of areas. None of these include the starting point in relation to the appellants' health. The skeleton argument for the appellants before the FtT does not plead that they could not access healthcare if they were removed, whether as part of 'very significant obstacles', or otherwise in relation to human rights grounds. An appeal to the Upper Tribunal is an opportunity to correct errors of law that may have arisen in the FtT, and not to argue points that were not taken at first instance. We conclude that the Judge was justified in taking Judge Anstis' determination as a starting point and then not departing from that starting point.

20. The appellants' grounds of appeal assert that the Judge insufficiently reasoned refusal on the grounds of paragraph 276ADE of the Immigration Rules (very significant obstacles) or art 8 Private and Family Life. Contrary to the appellants' assertion, the Judge does not give a single-paragraph decision on this point. She takes Judge Anstis' findings as her starting point at [27g], and then considers factors relevant to para 276ADE and the

appellants' Private and Family Lives from [57-67]. The judge takes an approach to the art 8 question that is entirely in line with the five steps identified in R (Razgar) v. Secretary of State for the Home Department [2004] UKHL 27, [2004] 2 AC 368. We conclude there is no merit in this ground of appeal.

21. The final ground of appeal asserts that the Judge took an incorrect approach to s117B of the Nationality, Immigration and Asylum Act 2002 and gave too much weight to the public interest in maintenance of effective immigration control. In our judgment, the ground of appeal either misunderstands that where an appellant meets the factors in s117B(2) and (3), this weighs neutrally in the balance, or the ground of appeal is seeking to re-litigate a matter which was decided in the FtT. Having considered the Judge's approach to s117B and the evidence that was available to her, we are satisfied that the Judge took a correct approach to the legislative provisions.

Conclusions

22. We find that the Judge did err by overlooking the second DHL envelope when assessing the court documents. However, for the reasons we have set out, the error was not material.

23. We conclude that the Judge did not err in law in relation to whether a duty to verify documents arose, the alternative analysis on the risk to the appellants were the arrest warrant to be a reliable document, the approach to the appellants' health, the approach to very significant obstacles and art 8 considerations, or the approach to s117B.

Notice of Decision

24. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

25. We do not set aside the decision.

D Cotton

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 March 2024